IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY THIRD DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 14780 of 1996

Between:

The Senior Manager APSRTC
Khammam Region Khammam
Khammam Dist

..... PETITIONER

AND

1 The Deputy Transport Commissioner Nayeemnagar, Hanamkonda
Warangal Dist
2 The Licensing Officer, O/o. the Regional Transport Authority
Khammam, Khammam Dist

.....RESPONDENT(S

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to call for the records relating to the impugned demand notice No.9453/A2/86, Dt.05/08/86 on the file of the 2nd respondent and as confirmed by the 1st respondent in the proceedings NO.04/TA/A2/94, Dt.20/05/1995 and quash the same by way of issue of writ of certiorari or any other appropriate writ, order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case.

For the Petitioner: MR.K.HARINATH , Advocate

For the Respondent No.: SPL GP FOR TAXES

The Court Made the Following :

O R D E R (Per Hon'ble Mr. Justice Bilal Nazki)

Heard learned counsel for the parties.

The petitioners/Andhra Pradesh State Road Transport Corporation have challenged an order levying the tax on certain vehicles. A show cause notice was issued on 5-8-1986 to the petitioners by the respondents, pointing out findings of an audit report. According to this report, the spare buses of Khammam Depot had been used by the petitioners to carry marriage parties etc. which could have not been done. The spare buses carry less rate of tax because they were required to be used by the petitioners to maintain an uninterrupted transport services and in case of break down of any of the bus plying regularly, such buses could be pressed into service. The contention of the department was that these buses could not be utilized for any other purpose. However they could be used on occasions like Jathara and even for using of buses for Jatharas, they had to pay an additional tax of Rs. 25/- per seat per week in accordance with G.O.Ms.No.1041, dated 4-10-1982. Consequently, the Department

was of the view that the buses had been used as contract carriers and therefore they had to pay tax as contract carriers. No reply was given in the show cause notice and ultimately final order was passed.

The learned counsel for the petitioner has drawn our attention to the Division Bench judgment of this court reported in ***D. Narayanaswamy –V- The Regional Transport Officers Ananthapur***, a similar matter was considered by the Division Bench and the Division Bench came to the conclusion that in terms of Sec. 3 of the Motor Vehicles Taxation Act, 1963, once tax is levied and recovered, the Department has no power to reopen the question. It held,

> ‘ The question, therefore, is firstly whether the respondent had the power to revise the tax already levied in 1968 and give it retrospective effect. Admittedly there is no provision on the lines of the Income Tax or Sales Tax Acts empowering the licensing authority to revise the tax, which he had imposed and entered in the certificate of registration. It was not disputed before us that whether there is a dispute in regard to fixation of the amount of tax it is the Licensing Officer who is empowered to determine that. According to Rule-3 it is that officer who entered the quantum of tax payable for the vehicle in the certificate of registration. In the absence of any power to revise, we do not think it will be proper for the respondent to revise the previous assessment made and demand tax at a higher rate. The contention that the previous quantum was determined under a mistake and therefore the respondent can revise it is not convincing. The mistake, which can be corrected, must be a clerical or arithmetical mistake. But when a provision of law has to be deliberately interpreted and tax imposed according to the said interpretation, it cannot be said that when Rs. 95/- was fixed previously there was a mistake. The Licensing Officer then interpreted the law in a particular way and now wants to change his opinion and fixed the tax at a higher rate. It cannot therefore, be said that it is a mistake which can be cured with retrospective effect. It is a change in the opinion and in the absence of

> any specific provisions of law; it was not competent for the Licensing Officer or any other authority to revise the tax with retrospective effect. The demand made from 1968 till date of notice at higher rate is without any jurisdiction and his therefore liable to be struck down.''

The learned Government Pleader, however, submits that there is no fresh demand. As a matter of fact, the audit pointed out that the tax had not been demanded from the petitioners on the rates envisaged under the Act and the rules made thereunder. But that is not the correct appreciation of the matter. In fact, if it is accepted what was pointed out by the audit that the buses were used as contract carriers, the Department had ample powers to proceed against the petitioner for violating the conditions of the contract, but they could not levy the tax at a rate different from the rate at which their tax had been accepted.

Following the judgment relied upon by the petitioners, we hold that the order demanding the additional tax from the petitioner is bad and illegal and is accordingly quashed.

The Writ Petition is accordingly allowed. No order as to costs.

(BILAL NAZKI,J)

23rd June, 2004 (P.S. NARAYANA,J)

VP/AJR

Copy to

1) The Deputy Transport Commissioner,

Nayeemnagar, Hanamkonda, Warangal,

2) The Licensing Officer,

o/o. the Regional Transport Authority, Khammam

Khammam District.

3) 2 CD copies

4) 2 CCs to the Spl. Govt. Pleader for Taxes,

High Court of A.P. Hyderabad